

REMARKS

The Final Office Action mailed January 11, 2008, has been received and reviewed. Claims 1-8, 10-32, 34-46, 48, 50 and 52-59 are currently pending in the application. Claims 2-8, 12-14, 22-32, 34-38, 46, 48, 50 and 52-54 are allowed. Claims 1, 10, 11, 15-21, 39-45 and 55-59 stand rejected. Applicant has amended claims 1, 10, 11, 15, 18, 21, 39, 42, 45 and 55-59 and respectfully requests reconsideration of the application as amended herein.

35 U.S.C. § 103 Obviousness Rejections

Claims 1, 10-11, 15-21, 39-45, 55-59 were rejected as being unpatentable over U.S. Patent No. 5,754,537 to Jamal ("Jamal") in view of U.S. Patent No. 6,880,103 to Kim ("Kim"). Applicant respectfully traverses this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant's disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1, 10-11, 15-21, 39-45, 55-59 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art references must teach or suggest all the claims limitations.

Regarding Applicant's rejected independent claims 1, 10, 11, 15, 18, 21, 39, 42, 45 and 55-59, the Office Action concedes and alleges:

- Regarding [independent] claim 1, ... Jamal differs from the claimed invention in that Jamal does not disclose transmitting [a] busy signal. However, Kim ... discloses transmitting busy [signal] (column 7, lines 4-15). (Office Action, p. 3).
- Regarding [independent] claim 10, ... Jamal differs from the claimed invention in that Jamal does not disclose receiving a busy signal from the base station. However, Kim ... discloses receiving [a] busy signal from [the] base station (column 7, lines 4-15). (Office Action, p. 4).
- Regarding [independent] claim 11, ... Jamal differs from the claimed invention in that Jamal does not disclose receiving a busy signal from the base station. However, Kim ... discloses receiving [a] busy signal from [the] base station (column 7, lines 4-15). (Office Action, p. 5).
- Regarding [independent] claims 15, [], 55, 57, 58, 59, ... Jamal differs from the claimed invention in that Jamal does not teach that the transmission rate is decreased in response to an assertion on the received busy signal. However, Kim ... discloses that the transmission rate is decreased in response to an assertion on the received busy signal (column 7, lines 4-15). (Office Action, p. 6).
- Regarding [independent] claims 18, [], 21,... Jamal differs from the claimed invention in that Jamal does not teach received busy signal. However, Kim ... discloses received busy signal from [the] base station (column 7, lines 4-15). (Office Action, p. 7).
- Regarding [independent] claims 39, [], 45, 56,... Jamal differs from the claimed invention in that Jamal does not teach that the transmission rate decrease in response to an assertion on the received busy signal. However, Kim ... discloses that the transmission rate is decreased in response to an assertion on the received busy signal (column 7, lines 4-15). (Office Action, p. 8).
- Regarding [independent] claim[] 42, ... Jamal differs from the claimed invention in that Jamal does not teach that the transmission rate is increased in response to an assertion on the received busy signal. However, [Kim] ... discloses that the transmission rate is increased in response to an assertion on the received busy signal (column 7, lines 4-15). (Office Action, pp. 8-9).

While the Office Action alleges Kim teaches a "busy signal" as claimed by Applicant, Applicant respectfully disagrees. Generally, while Kim uses the common term "busy signal," Kim teaches a **"busy signal"** that is determined and **based solely on that specific remote station**. In contrast, Applicant's amended independent claims generally recite a **"busy signal"** **based** at least in part on measured utilization **other remote stations** of shared resources.

Specifically, Kim teaches:

... when the base station 20 *perceives the data transmission from the terminal 10*, the base station 20 *generates* a channel occupying signal (hereinafter, referred to as a ‘*busy signal*’) ... (Kim, col. 7, lines 5-8; emphasis added).
 ... if the *busy signal is not transmitted* from the base station 20, that is, the base station 20 *does not perceive* the packet data *transmission from the terminal 10* (Kim, col. 7, lines 15-19; emphasis added).
 ... the base station 20 continually *transmits the busy signal until* data having *no errors are transmitted from the terminal 10*. (Kim, Col. 9, lines 36-39; emphasis added).

Therefore, since Kim’s “busy signal” is based solely on actions of that remote station, Kim does not teach or suggest Applicant’s claimed “busy signal” as recited in Applicant’s amended independent claims 1, 10, 11, 15, 18, 21, 39, 42, 45 and 55-59 which each recite, in part, a *busy signal based* at least in part *on* a measured utilization by *other remote stations* of a shared resource which is not taught or suggested in Kim.

Therefore, since neither Jamal (by the Office Action’s own admission) nor Kim teach or suggest Applicant’s claimed invention including the generation of a *busy signal based* at least in part *on* a measured utilization by *other remote stations* of a shared resource, as claimed by Applicant, these references, either individually or in any proper combination, cannot render obvious, under 35 U.S.C. §103, Applicant’s invention as presently claimed in independent claims 1, 10, 11, 15, 18, 21, 39, 42, 45 and 55-59. Accordingly, Applicant respectfully requests the rejection of presently presented independent claims 1, 10, 11, 15, 18, 21, 39, 42, 45 and 55-59 be withdrawn.

The nonobviousness of independent claim 15 precludes a rejection of claims 16 and 17 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 15 and claims 16 and 17 which depend therefrom.

The nonobviousness of independent claim 18 precludes a rejection of claims 19 and 20 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C.

§ 103(a) obviousness rejection to independent claim 18 and claims 19 and 20 which depend therefrom.

The nonobviousness of independent claim 39 precludes a rejection of claims 40 and 41 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 39 and claims 40 and 41 which depend therefrom.

The nonobviousness of independent claim 42 precludes a rejection of claims 43 and 44 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 42 and claims 43 and 44 which depend therefrom.

Allowable Subject Matter

Claims 12, 13, 14, 22-32, 34, 35, 36, 37, 38, 46, 48, 50, 52-54 are indicated to contain allowable subject matter. Applicant acknowledges this indication with appreciation.

CONCLUSION

Claims 2-8, 12-14, 22-32, 34-38, 46, 48, 50 and 52-54 were allowed. Furthermore, claims 1, 10, 11, 15-21, 39-45 and 55-59 are also believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned representative.

Respectfully submitted,

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